IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5849 of 1993

For Approval and Signature:

HON'BLE MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

CHAMPAKLAL F VALANI

Versus

P.V. SHAH & OTHERS

Appearance:

1. Special Civil Application No. 5849 of 1993

MR HJ NANAVATI for the Petitioner
MR MUKUND M DESAI for Respondent No. 1
Respondents Nos. 2-3 SERVED

CORAM : HON'BLE MISS JUSTICE R.M.DOSHIT

Date of decision: 30/11/2004

ORAL JUDGEMENT

The petitioner, a primary school teacher, challenges the judgment and order dated 31st March, 1993 passed by the Primary Education Tribunal (hereinafter referred to as "the Tribunal") in Application No.266/1988 in so far as the petitioner has been denied subsistence allowance for the period he was placed under suspension pending disciplinary proceeding.

The petitioner joined the service as a Drawing Teacher in the primary school run by the respondent - The Adarsh Kelavani Mandal, Patan (hereinafter referred to as "the Mandal"). On 22nd January, 1985 a charge-sheet came to be issued upon the petitioner and a disciplinary proceeding was initiated against him. By order dated 29th January, 1985 made by the Mandal, the petitioner was placed under suspension. The said order specifically stipulated that during the period of suspension, on demand being made by the petitioner, his salary would be deposited in his bank account. After completion of the disciplinary enquiry, on 22nd July, 1985 the petitioner was given notice to show-cause why he should not be dismissed from service. Feeling aggrieved, the petitioner instituted Regular Civil Suit No.252/1985 in the Court of learned Civil Judge (S.D.), Mehsana. Pending the said suit, by order made by the learned Civil Judge below Application Exh.6, the Mandal was restrained from terminating the service of the petitioner. Hence, no order terminating the service of the petitioner was made against the petitioner and he continued to be in service. As the petitioner was not paid the subsistence allowance since the aforesaid order made below Application Exh.6, the petitioner preferred Special Civil Application No.1671/1986 before this Court. Before the Court (Coram: I.C.Bhatt, J.) the Mandal agreed to deposit the amount of arrears of subsistence allowance in the trial Court. In view of the said statement, by order dated 29th April, 1986, the said petition was permitted to be withdrawn. In compliance with the said statement a sum of Rs.5,783=82 was deposited in the trial Court on 3rd October, 1986. Upon constitution of the Tribunal the said suit came to be transferred to the Tribunal and renumbered as Application No.266/1988. The said Application was dismissed by the Tribunal by the above referred judgment and order dated 31st March, 1993. The Tribunal was of the opinion that in view of the interim order made below Application Exh.6 the petitioner ought to have reported for duty. As he did not report for duty the petitioner was not entitled to the salary or allowance on the principle of "no work no pay". The Tribunal also allowed the Mandal to proceed further with the disciplinary proceeding. Hence, the present

petition.

Pending this petition the petitioner has been removed from service by order dated 10th September, 1993. I am informed that the said order has become final.

Learned advocate Mr.Nanavati has submitted that the Tribunal has manifestly erred in invoking the principle of "no work no pay". He has submitted that the order of suspension made against the petitioner was not stayed by the Civil Court. The interim order made by the Civil Court was limited to the termination of service of the petitioner. Thus, the petitioner continued to be under suspension. Hence, he ought to have been paid the subsistence allowance till he was removed from service.

I am of the opinion that Mr.Nanavati is right in contending that by the aforesaid order made by the learned Civil Judge below Application Exh.6, the Mandal was restrained from terminating the service of the petitioner. The said order, therefore, should not affect the order of suspension made against the petitioner. The petitioner would, therefore, be continued under suspension till he was removed from service. However, the claim for subsistence allowance made by the petitioner is not equitable. The petitioner cannot be permitted to avoid the consequences of the disciplinary proceeding and to claim subsistence allowance for indeterminate period. Hence, the petitioner's claim for subsistence allowance till he was removed from service requires to be rejected. The petitioner was, however, entitled to recover the aforesaid sum of Rs.5,783=82 deposited in the Civil Court.

In view of the above discussion, it is directed that the aforesaid sum of Rs.5,783=82 deposited in the Court of learned Civil Judge (S.D.), Mehsana in Regular Civil Suit No.252/1985 be remitted to the petitioner.

Subject to the above direction the petition is dismissed. Rule is discharged. There shall be no order as to cost.

(Ms. R.M.Doshit, J.)
/sakkaf